

AMENDED IN ASSEMBLY AUGUST 22, 2013

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 380

Introduced by Senator Padilla
(Coauthor: Assembly Member Gatto)

February 20, 2013

An act to add and repeal Section 7908 of the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 380, as amended, Padilla. Communications: service interruptions.

Existing law provides that where a law enforcement official has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, the official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines, as specified.

~~This bill, until January 1, 2020, bill~~ would prohibit a governmental entity, as defined, and a provider of communications service, as defined, acting at the request of a governmental entity, from undertaking to interrupt communications service, as defined, for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as defined, that makes specified findings. The bill would require

the order to clearly describe the specific service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected and be narrowly tailored to the specific circumstances under which the order is made, and would require that the order not interfere with more communication than is necessary to achieve the purposes of the order. The bill would allow the order to authorize an interruption of *communications* service only for as long as is reasonably necessary, require that the interruption cease once the danger that justified the interruption is abated, and require the order to specify a process to immediately serve notice on the communications service provider to cease the interruption.

The bill would authorize a governmental entity, ~~until January 1, 2020,~~ entity to interrupt communications service without first obtaining a court order if it reasonably determines that an extreme emergency situation exists that involves immediate danger of death or great bodily injury and there is insufficient time, with due diligence, to first obtain a court order, and it complies with other specified requirements including, applying for a court order within 6 hours after the commencement of the interruption of communications ~~service, as prescribed:~~ service. If the application is filed after the 6 hours, as the bill would authorize in an emergency, the application would be required to include a specified statement under penalty of perjury. Since perjury is a crime, this bill would impose a state-mandated local program by creating a new crime. Additionally, the bill would require a governmental entity to provide to the provider of communications service ~~and the court~~ a signed statement of intent to apply for a court order signed by an authorized official. *If a governmental entity does not apply for a court order within 6 hours due to an emergency, the bill would require the governmental entity to submit a copy of the signed statement of intent to the court within 6 hours.*

The bill would provide that good faith reliance upon an order of a judicial officer or a signed statement of intent to apply for a court order ~~that the governmental entity assets meets certain requirements~~ constitutes a complete defense for any communications service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.

The bill would also find and declare that ensuring that California users of any communications service not have this service interrupted and thereby be deprived of a means to connect with the state's 911 emergency services or be deprived of a means to engage in

constitutionally protected expression, is a matter of statewide concern, and not a municipal affair, as provided.

The bill would repeal these new provisions on January 1, 2020.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) Preserving the availability and openness of communications
4 networks is a bedrock principle of federal and state law and
5 essential to commerce, public safety, and democracy.

6 (b) With email, data transfers, videoconferencing, e-commerce,
7 and myriad online services now a core element of every type of
8 economic activity, interruption of communications service deprives
9 individuals and enterprises of the ability to participate in the
10 modern economy, with significant financial impact even if an
11 interruption is of short duration.

12 (c) Interruption of communications service threatens public
13 safety by depriving persons of the ability to call 911 and
14 communicate with family, friends, employers, schools, and others
15 in an emergency; deprives persons of the ability to receive wireless
16 emergency alerts; and impairs the ability of first responders to
17 communicate with each other.

18 (d) The right of citizens to freedom of speech under the First
19 Amendment to the United States Constitution and Section 2 of
20 Article I of the California Constitution extends to speech through
21 any technology, from the pamphlets and newspapers of the
22 Founding Fathers to the emails, blogs, tweets, and texts of modern
23 day citizens using wireless devices.

24 (e) The power of new wireless devices and technologies for
25 participation in democracy underscores the need to protect First
26 Amendment rights and ensure that California and the United States
27 do not take the path of oppressive governments around the world

1 that routinely shut down the Internet and wireless networks to
2 silence public protest.

3 (f) Interruption of communications service by a governmental
4 entity that prevents citizens from communicating can be a “prior
5 restraint” on speech, which the United States Supreme Court has
6 held bears a heavy presumption of unconstitutionality and is
7 justified only in exceptional circumstances.

8 (g) The California Supreme Court, in *Sokol v. Public Utilities*
9 *Commission* (1966) 65 Cal.2d 247, 265, articulated the standard
10 that any future commission rule for discontinuation of telephone
11 services used for illegal purposes must at a minimum require that
12 police obtain prior authorization to secure the termination of service
13 by satisfying an impartial tribunal that they have probable cause
14 to act, in a manner reasonably comparable to a proceeding before
15 a magistrate to obtain a search warrant.

16 (h) In August 2011, the Bay Area Rapid Transit District (BART)
17 shut down wireless service for three hours in order to quash a
18 public protest relating to a fatal shooting by BART police on a
19 train platform.

20 (i) In December 2011, BART adopted a policy authorizing
21 wireless service shutdowns with no court review and no probable
22 cause requirement, which prompted a public inquiry by the Federal
23 Communications Commission.

24 (j) With more than 85 percent of American adults owning a
25 wireless device, and use of wireless services and platforms
26 expanding every day, protecting these services from interruption
27 is more important than ever in order to protect commerce, public
28 safety, and First Amendment freedoms that are the core of
29 democracy.

30 SEC. 2. Section 7908 is added to the Public Utilities Code, to
31 read:

32 7908. (a) For purposes of this section, the following terms
33 have the following meanings:

34 (1) “Communications service” means any communications
35 service that interconnects with the public switched telephone
36 network and is required by the Federal Communications
37 Commission to provide customers with 911 access to emergency
38 services.

39 (2) “Governmental entity” means every local government,
40 including a city, county, city and county, a transit, joint powers,

1 special, or other district, the state, and every agency, department,
2 commission, board, bureau, or other political subdivision of the
3 state, or any authorized agent thereof.

4 (3) (A) “Interrupt communications service” means to knowingly
5 or intentionally suspend, disconnect, interrupt, or disrupt
6 communications service to one or more particular customers or
7 all customers in a geographical area.

8 (B) “Interrupt communications service” does not include any
9 interruption of communications service pursuant to a customer
10 service agreement, a contract, a tariff, a provider’s internal practices
11 to protect the security of its networks, Section 2876, 5322, or
12 5371.6 of this code, Section 149 or 7099.10 of the Business and
13 Professions Code, or Section 4575 or subdivision (d) of Section
14 4576 of the Penal Code.

15 (C) “Interrupt communications service” does not include any
16 interruption of service pursuant to an order to cut, reroute, or divert
17 *service to* a telephone line or wireless device used or available for
18 use for communication by a person or persons in a hostage or
19 barricade situation pursuant to Section 7907. However,
20 “interruption of communications service” includes any interruption
21 of service resulting from an order pursuant to Section 7907 that
22 affects *service to* wireless devices other than ~~those~~ *any wireless*
23 *device* used by, or available for use by, the person or persons
24 involved in a hostage or barricade situation.

25 (4) “Judicial officer” means a magistrate, judge, justice,
26 commissioner, referee, or any person appointed by a court to serve
27 in one of these capacities of any state or federal court located in
28 this state.

29 (b) (1) Unless authorized pursuant to subdivision (c), no
30 governmental entity and no provider of communications service,
31 acting at the request of a governmental entity, shall interrupt
32 communications service for the purpose of protecting public safety
33 or preventing the use of communications service for an illegal
34 purpose, except pursuant to an order signed by a judicial officer
35 obtained prior to the interruption. The order shall include all of
36 the following findings:

37 (A) That probable cause exists that the service is being or will
38 be used for an unlawful purpose or to assist in a violation of the
39 law.

1 (B) That absent immediate and summary action to interrupt
2 communications service, serious, direct, and immediate danger to
3 public safety, health, or welfare will result.

4 (C) That the interruption of communications service is narrowly
5 tailored to prevent unlawful infringement of speech that is protected
6 by the First Amendment to the United States Constitution or
7 Section 2 of Article I of the California Constitution, or a violation
8 of any other rights under federal or state law.

9 (2) The order shall clearly describe the specific communications
10 service to be interrupted with sufficient detail as to customer, cell
11 sector, central office, or geographical area affected, shall be
12 narrowly tailored to the specific circumstances under which the
13 order is made, and shall not interfere with more communication
14 than is necessary to achieve the purposes of the order.

15 (3) The order shall authorize an interruption of communications
16 service only for as long as is reasonably necessary and shall require
17 that the interruption cease once the danger that justified the
18 interruption is abated and shall specify a process to immediately
19 serve notice on the communications service provider to cease the
20 interruption.

21 (c) (1) Communications service shall not be interrupted without
22 *first obtaining* a court order except pursuant to this subdivision.

23 (2) If a governmental entity reasonably determines that an
24 extreme emergency situation exists that involves immediate danger
25 of death or great bodily injury and there is insufficient time, with
26 due diligence, to first obtain a court order, then the governmental
27 entity may interrupt communications service without first obtaining
28 a court order as required by this section, provided that the
29 interruption meets the grounds for issuance of a court order
30 pursuant to subdivision (b) and that the governmental entity does
31 all of the following:

32 (A) (i) Applies for a court order *authorizing the interruption*
33 *of communications service* without delay, but within six hours
34 after commencement of an interruption of communications service
35 except as provided in clause (ii).

36 (ii) If it is not possible to apply for a court order within six hours
37 due to an emergency, the governmental entity shall apply for ~~an~~
38 ~~a court order as soon as possible~~, *at the first reasonably available*
39 *opportunity*, but in no event later than 24 hours after
40 commencement of an interruption of communications service. If

1 an application is filed more than six hours after commencement
2 of an interruption of communications service pursuant to this
3 clause, the application shall include a declaration under penalty
4 of perjury stating the reason or reasons that the application was
5 not submitted within six hours after commencement of the
6 interruption of communications service.

7 (B) Provides to the provider of communications service involved
8 in the service interruption ~~and the court~~ a statement of intent to
9 apply for a court order signed by an authorized official of the
10 governmental entity. The statement of intent shall clearly describe
11 the extreme emergency ~~circumstances~~, *circumstances* and the
12 specific communications service to be ~~interrupted with sufficient~~
13 ~~detail as to the customer, cell sector, central office, or geographical~~
14 ~~area affected.~~ *interrupted. If a governmental entity does not apply*
15 *for a court order within 6 hours due to the emergency, then the*
16 *governmental entity shall submit a copy of the signed statement*
17 *of intent to the court within 6 hours.*

18 (C) Provides conspicuous notice of the application for a court
19 order authorizing the communications service interruption on its
20 Internet Web site without delay, unless the circumstances that
21 justify an interruption of communications service without first
22 obtaining a court order justify not providing the notice.

23 (d) An order to interrupt communications service, or a signed
24 statement of intent provided pursuant to subdivision (c), that falls
25 within the federal Emergency Wireless Protocol shall be served
26 on the California Emergency Management Agency. All other orders
27 to interrupt communications service or statements of intent shall
28 be served on the communications service provider's contact for
29 receiving requests from law enforcement, including receipt of and
30 responding to state or federal warrants, orders, or subpoenas.

31 (e) A provider of communications service that intentionally
32 interrupts communications service pursuant to this section shall
33 comply with any rule or notification requirement of the commission
34 or Federal Communications Commission, or both, and any other
35 applicable provision or requirement of state or federal law.

36 (f) Good faith reliance by a communications service provider
37 upon an order of a judicial officer authorizing the interruption of
38 communications service pursuant to subdivision (b), or upon a
39 signed statement of intent to apply for a court order ~~that the~~
40 ~~governmental entity asserts meets the requirements of~~ *pursuant to*

1 subdivision (c), shall constitute a complete defense for any
2 communications service provider against any action brought as a
3 result of the interruption of communications service as directed
4 by that order or statement.

5 (g) The Legislature finds and declares that ensuring that
6 California users of any communications service not have that
7 service interrupted, and thereby be deprived of 911 access to
8 emergency services or a means to engage in constitutionally
9 protected expression, is a matter of statewide concern and not a
10 municipal affair, as that term is used in Section 5 of Article XI of
11 the California Constitution.

12 (h) This section shall remain in effect only until January 1, 2020,
13 and as of that date is repealed, unless a later enacted statute, that
14 is enacted before January 1, 2020, deletes or extends that date.

15 SEC. 3. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.